defendant recover from the plaintiff any actual loss he may have suffered as a result of the receivership.[9]

A further question is presented when the funds prove insufficient to pay the receiver's expenses. Here, if the suit is not successful, as between the plaintiff and the receiver it seems equitable to make the plaintiff pay the expenses of the management of the property by the court. But if the plaintiff's claim is sustained, it takes extraordinary circumstances to justify charging him with the deficit. Thus, when by agreement certain money which would naturally have gone into the fund was paid directly to the plaintiff and the fund proved too small to cover the receivership expenses the plaintiff was rightly called on for the balance.[10] But in the ordinary case the plaintiff should not be held, since the receiver is not the agent of the plaintiff but of the court itself. Accordingly the Supreme Court of the United States recently held that a creditor who had a receiver appointed over a quasi-public corporation could not be charged with the expenses of managing the property. *Atlantic Trust Co.* v. *Chapman*, 208 U. S. 360.[11] To justify holding the plaintiff there must be special circumstances which change the equities of the situation, or the plaintiff must have assumed liability either by an agreement between the parties[12] or under terms required by the court as a condition precedent to the appointment of the receiver.

THE EFFECT ON AN INSURANCE POLICY OF THE EXECUTION OF THE INSURED FOR A CRIME. — Nearly eighty years ago it was decided in England that, even though a policy of life insurance contains no provision avoiding it for death at the hands of justice, it is against public policy to allow recovery when the insured has been executed for a crime.[1] This doctrine has been approved by text-writers,[2] and has been followed in recent years by the Supreme Court of the United States.[3] In fact it is first questioned in a recent Illinois decision which reaches the opposite conclusion.[4] *Collins* v. *Metropolitan Life Ins. Co.*, 83 N. E. 542. This decision rests solely on the ground that, since execution for felony no longer works corruption of the blood, there is no public policy against the descent of the felon's property. In allowing recovery the court assumes that even after the execution of the insured the policy is a valid chose in action, which is the very point in issue. It leaves unanswered the argument of all prior decisions that the provision for insurance against death at the hands of justice, included in the broad terms of the contract, is void as against public policy.

Where the insured commits suicide and the policy contains no suicide clause, the courts are almost unanimous in allowing beneficiaries to recover.[5]

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[9] Cutter *v.* Pollock, 7 N. Dak. 631; Mitter *v.* Brown, 58 W. Va. 237.

[10] Farmers' Nat'l Bank *v.* Backus, 74 Minn. 264. *Cf.* Welch *v.* Renshaw, 14 Colo. App. 526.

[11] Accord, Farmers', etc., Co. *v.* Oregon, etc., Co., 31 Ore. 237. But *cf.* Tome *v.* King, 64 Md. 166.

[12] Kelsey *v.* Sargent, 2 N. Y. St. Rep. 669.

[1] Amicable Ins. Co. *v.* Bolland, 4 Bligh (N. S.) 194.

[2] 1 May, Ins., 4 ed., § 326; Bliss, Life Ins., 2 ed., § 223.

[3] Burt *v.* Ins. Co., 187 U. S. 362 (denying recovery even though the insured was innocent of the crime for which he was executed). See 14 HARV. L. REV. 624; 16 *ibid.* 453.

[4] *Contra*, Collins *v.* Metropolitan Life Ins. Co., 27 Pa. Super. Ct. 353.

[5] Fitch *v.* Life Ins. Co., 59 N. Y. 557; Mills *v.* Rebstock, 29 Minn. 380; Morris *v.*

But it has been held that the personal representatives of the insured cannot recover under such circumstances, partly on the ground that suicide is not a risk assumed by the insurer, but principally on the ground that the assumption of such a risk is against public policy.[6] There seems to be no sound reason for the distinction.[7] If it is against public policy for personal representatives to recover on a provision insuring against suicide which is included in the broad language of the contract, it is against public policy for such a provision to be included in any insurance contract, and the contract must be void to that extent. At least one case has taken this view and has denied recovery to a beneficiary.[8] But as the great weight of authority is opposed to this case and to the reasoning in the cases denying recovery to the representatives of the insured, it must be taken as settled that where the insured has committed suicide there is no public policy against recovery on a silent policy.

The two lines of cases seem irreconcilable in principle. For, whereas in the former it is said to be against public policy to insure against death as the result of a crime; in the latter it is considered not against public policy to insure against suicide which, if not a crime, is clearly an act against the policy of the law. On principle the former view seems the sounder. The argument that an express stipulation to insure against death at the hands of justice is against public policy as tending to encourage crime is unanswerable. Nor should it make a difference that the stipulation is embodied in a wider contract of indemnity.[9] Probably no court would hold valid an accident policy insuring a robber against injury while plying his trade. And certainly an insured cannot recover on a fire insurance policy where he intentionally burns the property insured, even though the policy is broad enough in its terms to cover all risks.[9] These analogies, however, have been disregarded in the suicide cases, and the modern tendency of the law as there evidenced is not to limit recovery on silent policies, even though considerations of public policy in some cases would seem to forbid it.[10] The case under discussion, however, seems to accord with that tendency, and it is not improbable that, on the analogy of the suicide cases, it may be followed in spite of prior contrary decisions.

EFFECT OF ADJUDICATION OF BANKRUPTCY ON THE TITLE TO THE PROPERTY OF THE BANKRUPT. — The Bankruptcy Act of 1898 provides that the title of the trustee shall vest as of the date of adjudication.[1] This fiction has caused a diversity of opinion as to the nature and location of the title after adjudication and before the appointment of a trustee. Title has been said to be *in custodia legis*. But it is significant that because of the opposition of the law to lapses in title, and the difficulty in conceiving the court as a title-taking body, courts have taken this view only when

Life Ins. Co., 183 Pa. St. 563; Patterson *v.* Mutual Life Ins. Co., 100 Wis. 118; Campbell *v.* Supreme Conclave, 66 N. J. L. 274; Seiler *v.* Life Ass'n, 105 Ia. 87; Lange *v.* Royal Highlanders, 110 N. W. 1110 (Neb.).

[6] Ritter *v.* Mutual Life Ins. Co., 169 U. S. 139. See Supreme Commandery *v.* Ainsworth, 71 Ala. 436, 446.

[7] Campbell *v.* Supreme Conclave, *supra*. See 11 HARV. L. REV. 547.

[8] Hopkins *v.* Life Assur. Co., 94 Fed. 729.

[9] Washington Union Ins. Co. *v.* Wilson, 7 Wis. 169.

[10] McDonald *v.* Order of Triple Alliance, 57 Mo. App. 87. But see Hatch *v.* Ins Co., 120 Mass. 550.

[1] § 70 *a*, Act of July 1, 1898; 30 Stat. at L. 544.